Affirmed and Opinion filed January 12, 2021.

In The

Fourteenth Court of Appeals

NO. 14-19-00158-CV

METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY, Appellant

V.

TRACEY CARR, Appellee

On Appeal from the 157th District Court
Harris County, Texas
Trial Court Cause No. 2017-79160

OPINION

This case is an interlocutory appeal from the denial of a plea to the jurisdiction alleging that the plaintiff failed to provide notice of her claim under Section 101.101 of the Civil Practice and Remedies Code. We hold that the plaintiff complied with the requirement of reasonably describing the place of the incident giving rise to her claim by alleging that it occurred on a bus near a specific intersection. Thus, the trial court did not err by denying the plea. We affirm.

I. Legal Principles

The Tort Claims Act requires a plaintiff to provide written notice of their claim to a governmental unit within six months of the incident giving rise to the claim. Tex. Civ. Prac. & Rem. Code § 101.101(a). "The notice must reasonably describe: (1) the damage or injury claimed; (2) the time and place of the incident; and (3) the incident." *Id.* Notice serves the purpose of "alerting governmental entities of the need to investigate claims." *Worsdale v. City of Killeen*, 578 S.W.3d 57, 64 (Tex. 2019).

Compliance with the notice provision is jurisdictional. *Colquitt v. Brazoria Cty.*, 324 S.W.3d 359, 543 (Tex. 2010). Generally, whether a governmental unit had notice timely is a question of law. *See Worsdale*, 578 S.W.3d at 66. We review the issue de novo if the evidence is undisputed. *Id.* Similarly, we review issues of statutory interpretation de novo. *See Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm'n*, 518 S.W.3d 318, 325 (Tex. 2017). When reviewing the meaning of statutory terms, we interpret undefined terms according to their ordinary meaning. *Tex. Dep't of Crim. Justice v. Rangel*, 595 S.W.3d 198, 208 (Tex. 2020). We typically look to dictionary definitions to determine a term's common, ordinary meaning. *Id.*

II. Background

It is undisputed that, within six months of the incident giving rise to Tracey Carr's claims, she informed the defendant, Metropolitan Transit Authority of Harris County (METRO), the following:

> ***The Incident*** — As she was boarding a bus operated by METRO's employee, whose identity was unknown to Carr, the driver accelerated suddenly and without warning, which caused Carr to fall.

> ***The Injury*** — Carr injured her back, neck, and leg, and she suffered herniation of her cervical spine and herniation of her lumbar spine.
>
> ***The Time and Place*** — The incident occurred on October 25, 2017, on or around 7:15 p.m. near the intersection of Bellaire Boulevard and Gessner Drive.

Carr also alleged that the number on the bus was 3578, and the driver was a male, heavy set Hispanic and/or Caucasian, with brown-gray hair, approximately forty to fifty years of age.

METRO filed a plea to the jurisdiction, an amended plea, and a supplement to the plea. METRO attached part of Carr's deposition and the deposition of one of its employees. Carr's deposition indicated that the driver of the bus was not Black. The employee, a Black man whom METRO claimed was the driver of bus number 3578 at the time of the incident, testified that nobody fell on his bus.[1] The employee referred to the fact that he was on the "number 2 line on Gessner and Bellaire." He testified that the Gessner and Bellaire stop was "a busy place because 46 cross [sic] it, dropping passengers to change." METRO noted that, after the employee's deposition, Carr served a supplemental request for METRO to produce "copies of any relevant document that identifies which bus drivers were working or scheduled to have worked driving on the 'Route Number #46 Gessner Route' Weekday Northbound and Southbound Wednesday on Wednesday 10/25/2017 between 5pm.–8pm."

III. Analysis

In its sole issue on appeal, METRO contends that Carr's notice was insufficient to vest the trial court with jurisdiction because the undisputed evidence

[1] The employee testified that he was not sure if he was the driver of that particular bus at that time, but METRO's records indicated that he was.

shows that Carr identified the wrong bus number, and therefore, she failed to identify the correct "place" of the incident. That is, METRO contends that the "place" required by Section 101.101 is the number of the bus upon which Carr was riding, and without providing the correct bus number, a plaintiff fails to identify the "place" of the incident.

METRO cites no authority for defining "place" so narrowly. As commonly understood, "place" means "a particular region, center of population, or location." *Place*, Dictionary by Merriam-Webster, https://www.merriam-webster.com/dictionary/place (last visited Dec. 18, 2020). Under the statute, a plaintiff need only describe the place "reasonably." *See* Tex. Civ. Prac. & Rem. Code § 101.101(a). Here, Carr identified the location as near the intersection of Bellaire Boulevard and Gessner Drive.

METRO cites *City of Waco v. Landingham*, 158 S.W.2d 79 (Tex. App.—Waco 1940, writ ref'd), for the proposition that a "material variance" between facts alleged in a notice, required by a city's charter, and proven at trial is "fatal." *See id.* at 80. In *Landingham*, the variance concerned the "cause of the injury"—that is, whether the driver started a truck while the plaintiff was attempting to alight therefrom, versus whether the brakes were in a defective condition. *Id.* The court reasoned that this variance was material because it "tend[ed] to defeat the purpose of the notice." *See id.*

METRO cites no authority concerning a plaintiff's erroneous surplusage allegation in a notice pursuant to Section 101.101, and we have found none. Assuming that the rationale of *Landingham* is persuasive when applying Section 101.101, and that METRO's evidence proves Carr identified the wrong bus number, we cannot conclude based on this fact alone that any variance defeated the purpose of the notice requirement. Rather, Carr's notice adequately alerted

METRO of the need to investigate her injury resulting from an incident at or around 7:15 p.m. on October 25, 2017, on a METRO bus near the intersection of Bellaire Boulevard and Gessner Drive. *See Worsdale*, 578 S.W.3d at 64. This description of the place was reasonable for the purpose of supplying METRO with notice of the claim. *See* Tex. Civ. Prac. & Rem. Code § 101.101(a); *cf. City of Temple v. Wilson*, 365 S.W.2d 393, 394 (Tex. App.—Austin 1963, writ ref'd n.r.e.) (plaintiff reasonably complied with the notice requirement in a city charter to allege "when" damage or injury occurred, although plaintiff alleged that the date of collision was August 30, 1960, but the "true and correct date was August 31, 1960").

IV. Conclusion

The trial court did not err by denying METRO's plea to the jurisdiction. METRO's sole issue is overruled, and we affirm the trial court's order.

/s/ Ken Wise
Justice

Panel consists of Chief Justice Christopher and Justices Wise and Zimmerer.